



N 09/655,166

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: HEDRINGTON ET AL. Examiner: D. BECKER
Serial No.: 09/655,166 Group Art Unit: 1761
Filed: SEPTEMBER 5, 2000 Docket No.: 1850.292USD1
Title: METHOD FOR COOKING A PIZZA (AS AMENDED)

CERTIFICATE UNDER 37 CFR 1.8:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop APPEAL BRIEF-PATENTS, , Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 27, 2004.

By:

Name:

Debra A. Bailey
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APPELLANT'S BRIEF ON APPEAL

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P.O. Box 1450
Alexandria, VA 22313-1450

23552

PATENT TRADEMARK OFFICE

Sir:

This Brief is presented in support of the Appeal filed December 17, 2003, from the final rejection of Claims 22 and 23 of the above-identified application, as set forth in the Office Action mailed September 17, 2003.

Applicant is filing concurrently herewith a Notification of Change to Small Entity Status Pursuant to 37 C.F.R. 1.27(c)(1). A check for \$165.00 to cover the required fee for filing this Brief is enclosed. An original and two copies of the Brief are enclosed herewith.

I. REAL PARTY OF INTEREST

The Real Party of Interest is National Presto Industries, Inc.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences for the above-referenced patent

application
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III. STATUS OF CLAIMS

Claims 1-21 have been cancelled. Claims 22 and 23 are pending. Claims 22 and 23 have been rejected and are the subject of this Appeal (Appendix 1, Claims).

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection.

V. SUMMARY OF THE INVENTION

The present invention relates to a method for cooking a pizza with a cooking apparatus having heating elements that only cover a portion of the pizza as the pizza is rotated relative to the heating elements. The pizza 2 is positioned on a circular food support member 70 of cooking apparatus 10. See page 5, line 3; page 6, line 11; and Figs. 1-6. Rotatable shaft 28 rotates the food support member 70 multiple times relative to lower and upper housings 20, 50. The lower and upper housing 20, 50 are smaller than the food support member 70 such that the lower and upper housings extend under and over respectively only a portion of the food support member. See Figs. 2 and 5. The pizza 2 is positioned over the axis of rotation of the food support member 70. See Fig. 1. Heating members 24, 56 in the housings 20, 50 apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber to cook the pizza.

The method of the present invention cooks a pizza wherein only a portion of the pizza 2 is positioned between the lower and upper housings 20, 50 at any given time. See page 6, line 1; and page 8, line 6. As one example, a 12-inch frozen pizza can be cooked in approximately 12 minutes, where the shaft 28 rotates between 1/2 to 2 revolutions per minute, and more particularly, 1 revolution per minute. See page 5, line 8; and page 10, line 2.

The food support member 70 is removable from the heating chamber after the pizza is cooked. See page 8, line 6; and page 9, line 30. The apparatus can be conveniently stored

wherein the smaller foot print housings are separate from the larger food support member. The food support member can also be used as a serving tray to serve the cooked pizza.

VI. ISSUES PRESENTED FOR REVIEW

1. Whether claim 22 is obvious under 35 U.S.C. 103(a) as being unpatentable over Sinks (U.S. Patent No. 1,054,321) in view of Lang et al. (U.S. Patent No. 5,039,535)?

2. Whether claim 23 is obvious under 35 U.S.C. 103(a) as being unpatentable over Sinks (U.S. Patent No. 1,054,321) in view of Lang et al. (U.S. Patent No. 5,039,535)?

VII. GROUPING OF CLAIMS

Claims 22 and 23 do not stand or fall together.

VIII. ARGUMENT

1. Obviousness of Claim 22

Claim 22 concerns a method of cooking a pizza. The cited art does not teach or suggest the method of claim 22. Even if structural elements of the two cited references can be combined as the Examiner suggests, the method of cooking a pizza as recited by claim 22 is still not taught or suggested by the cited art.

There is no teaching or suggestion in either of the references to Sinks (U.S. Patent No. 1,054,321) or Lange et al. (U.S. Patent No. 5,039,535) to cook a pizza by applying heat to only a portion of the pizza at a time as each portion rotates through the heating chamber as recited in claim 22. In the Lang et al. reference, both the upper and lower housings extend completely over and under, respectively, the pizza. Heat is constantly delivered to the entire pizza as taught by Lang et al., as the entire pizza rests within the heating chamber.

Sinks concerns a manually operated device in which a turn-table 3 can be rotated relative to a casing 1 including interior burners 2. Sinks includes a central spindle 4 which projects

through food supporting grill 8 in order to mount spindle 4 to casing 1 with an upper guide bearing 6.

There is no teaching or suggestion in Sinks that a food item can be centrally placed on grill 8, and then cooked by only having a portion of the food item within casing 1 at any giving time. In fact, such cooking is impossible with the Sinks device due to the presence of central spindle 4 projecting above grill 8. A pizza could not be centrally located as required by claim 22.

Neither Sinks or Lang et al. teaches or suggests cooking a pizza by: 1) placing a pizza on a generally circular, rotatable food support member having a central axis of rotation where the pizza is positioned over the axis of rotation; and 2) rotating the pizza multiple times through a heating chamber defined by upper and lower housings, the upper and lower housings extending over and under respectively only a portion of the food support member. As recited by claim 22, the heating members in the housings apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber to cook the pizza. Neither Sinks nor Lang et al. teaches or suggests that a pizza can be cooked in this manner. In both references, the food item is entirely within the heating chamber during the cooking process. Sinks teaches at page 1, line 73 "articles placed upon the grill by the operator are readily turned into close proximity to the heating means and may be readily brought out again for inspection and for turning on the grill." There is no teaching or suggestion that cooking of a pizza could occur while portions of the pizza are in the heating chamber, and the remaining portions are outside of the heating chamber.

Various reasons are supplied by the Examiner in the Office Actions for combining Sinks and Lang et al. Applicants respectfully submit the references are not combinable in the manner suggested by the Examiner to result in the method of claim 22. Further, the Examiner has used

hindsight analysis. Claim 22 concerns a method of cooking wherein a pizza is cooked without the necessity for an appliance as large as the pizza itself. Sinks teaches that the casing 1 is as large as the food item since the food item is disposed between the central axis defined by spindle 4 and an outside edge of grill 8. Further, Sinks is a manually operated device that is selectively moved by the operator to place food items into casing 1, and to remove food items. Lang et al. on the other hand is concerned with rotating a pizza contained entirely within a heating chamber in order to cook the pizza. For these reasons, Sinks and Lang et al. are not combinable to support a rejection of the method steps in claim 22.

Applicants submit the Examiner has conducted an impermissible hindsight-based analysis that uses Applicants' claims as a blueprint to pick and choose from isolated features in the prior art to construct the claims. In considering obviousness, the Examiner may not combine references unless there is a reason, suggestion, or motivation in the prior art that would lead one of ordinary skill in the art to make the combination, and that would also suggest a reasonable likelihood of success. Smiths Indus. Med. Sys. vs. Vital Signs, Inc. , 183 F.3d 1347, 1356 (Fed. Cir. 1999). The mere possibility that references could be combined is insufficient to support a conclusion of obviousness. Gentry Gallery, Inc. v. Berkline Corp. , 134 F.3d 1473, 1478 (Fed. Cir. 1998). Consequently, there is no legal basis for concluding that an invention would have been obvious "solely because it is a combination of elements that were known in the art at the time of the invention." Smiths Indus. Med. Sys., 183 F.3d at 1356.

It is erroneous for the Examiner to "use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." Ecolchem, Inc. v. S. Cal. Edison Co., 227 F.3d 1361, 1371 (Fed. Cir. 2000). To prevent hindsight-based obviousness analysis, the Federal Circuit has required a clear and particular showing of a

teaching or motivation to combine the prior art references relied upon to invalidate claims.

In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence of motivation to combine the references. Ecolochem, 227 F.3d at 1372. For that reason, the Federal Circuit has required a specific finding of a suggestion or motivation to combine. Ruiz v. A.B. Chance Co., 234 F.3d 654, 665 (Fed. Cir. 2000).

In this case, the Examiner has included various reasons for combining the references including that pizza was a popular food item, and that Lang et al. can accommodate larger food items, such as pizza, due to its lack of a central, protruding shaft. Also, the Examiner has identified a need to reduce the risk of burns to the operator. Further, the Examiner noted Lang et al. teaches a side heating element 60, saying it shows intermittent heating. These reasons for combining are based on hindsight reconstruction with respect to the method for cooking a pizza of claim 22. The devices and related methods taught by Sinks and Lang et al. are different. Lang et al. teaches controlled rotation of the food item while the food item is completely contained within the heating chamber. In Lang et al., side heating element 60 is one of three elements applying heat to the pizza contained within the heating chamber at all times. Sinks teaches a manually rotatable turn-table 3 which can be moved at selected times relative to a casing 1 which covers one half of the turn-table in order to allow the user to manually position food items into and out of casing 1 at desired times. There is no discussion in Sinks of constant rotation of the turn-table 3. Applicants respectfully submit there is no teaching or suggestion to combine Sinks and Lang et al. to result in the method of claim 22.

Even if Sinks and Lang et al. are combined, such as to remove the upper spindle 4 as the Examiner suggests, the references fail to teach or suggest that a pizza can be cooked while

centered on a food support, with "the upper and lower housings extending over and under respectively only a portion of the food support member such that heating members in the housings apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber." Sinks teaches that the food item is either entirely in casing 1, or outside of casing 1. To the extent Sinks has a food item entering casing 1 wherein a portion is within casing 1, and a portion is outside of casing 1, this only occurs during the checking or turning process when the operator moves grill 8 so as to position the food item within the heating chamber of casing 1, or to remove it. There is no centrally located food item which constantly has a portion outside of the heating chamber. In Lang et al., no portion of the food item is outside of the heating chamber.

There is simply no teaching or suggestion in the prior art of a method of cooking a rotating pizza, where a first portion of the pizza is within a heating chamber and a remaining portion is outside of the heating chamber. Without Applicants' teaching, the Examiner has engaged in speculation that such a method was obvious, or that it would even work to effectively cook pizza. The cited art does not teach that a pizza can be cooked when only a portion is between the heating members at any given time. Referring to Sinks or Lang et al. does not support the Examiner's assertions that Applicants' method steps are obvious. In fact, referring to Sinks or Lang et al. shows that the teachings were to completely place the food item in the heating chamber for cooking.

Applicants submit that the disclosures of Sinks and Lang et al. for cooking food that is completely within the heating chambers do not teach or suggest the method of claim 22 where only a portion of the rotating pizza is within the heating chamber at any given time. Neither Sinks or Lang et al. alone or in combination teaches this method.

2. Obviousness of Claim 23.

The cited art does not teach or suggest the additional method step of claim 23 of removing the food support member from the heating chamber after the pizza is cooked. Neither Sinks nor Lang et al. teach or suggest removing the food support member from the smaller footprint housings. Such removal is useful for storage of the food support member separate from the smaller footprint housings. Also, the food support member can be used to serve the cooked pizza.

Neither of the two cited references teaches or suggests the removal of the food support member. In Sinks, while grill 8 removable as separate halves, turn-table 3 is carried on a spindle 4 with upper and lower portions which prevent its removal. In Lang et al., there is no motivation to remove cooking surface 38. Further, as noted above, there is no motivation to combine Lang et al. and Sinks to provide a removable food support member in combination with smaller footprint upper and lower housings for use in cooking a pizza.

SUMMARY

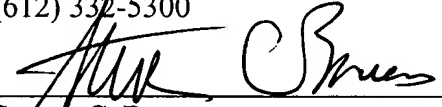
It is earnestly requested that the Examiner's rejection be reversed, and that all of the pending claims be allowed.

Please charge any additional fees or credit overpayment to Merchant & Gould Deposit Account No. 13-2725.

Respectfully submitted,

MERCHANT & GOULD P.C.
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Minneapolis, Minnesota 55402-0903
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Date: Jan. 27, 2004



Steven C. Bruess
Reg. No. 34,130
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APPENDIX 1

THE CLAIMS ON APPEAL (as finally amended)

22. (Previously presented) A method for cooking a pizza comprising the steps of:

placing a pizza on a generally circular, rotatable food support member having a central axis of rotation wherein the food support member is adapted to be disposed in a substantially horizontal orientation and the pizza is positioned over the axis of rotation of the food support member; and

rotating the pizza contained on the food support member multiple times through a heating chamber defined by upper and lower housings, the upper and lower housings extending over and under respectively only a portion of the food support member such that heating members in the housings apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber to cook the pizza.

23. (Previously presented) The method of claim 22 further comprising the step of removing the food support member from the heating chamber after the pizza is cooked.



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PATENT

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|-------------|---|-----------------|--------------|
| Applicant: | HEDRINGTON ET AL. | Examiner: | D. BECKER |
| Serial No.: | 09/655,166 | Group Art Unit: | 1761 |
| Filed: | SEPTEMBER 5, 2000 | Docket No.: | 1850.292USD1 |
| Title: | METHOD FOR COOKING A PIZZA (AS AMENDED) | | |

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The method of the present invention cooks a pizza wherein only a portion of the pizza 2 is positioned between the lower and upper housings 20, 50 at any given time. See page 6, line 1; and page 8, line 6. As one example, a 12-inch frozen pizza can be cooked in approximately 12 minutes, where the shaft 28 rotates between 1/2 to 2 revolutions per minute, and more particularly, 1 revolution per minute. See page 5, line 8; and page 10, line 2.

The food support member 70 is removable from the heating chamber after the pizza is cooked. See page 8, line 6; and page 9, line 30. The apparatus can be conveniently stored

wherein the smaller foot print housings are separate from the larger food support member. The food support member can also be used as a serving tray to serve the cooked pizza.

VI. ISSUES PRESENTED FOR REVIEW

1. Whether claim 22 is obvious under 35 U.S.C. 103(a) as being unpatentable over Sinks (U.S. Patent No. 1,054,321) in view of Lang et al. (U.S. Patent No. 5,039,535)?

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VII. GROUPING OF CLAIMS

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1. Obviousness of Claim 22

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There is no teaching or suggestion in either of the references to Sinks (U.S. Patent No. 1,054,321) or Lange et al. (U.S. Patent No. 5,039,535) to cook a pizza by applying heat to only a portion of the pizza at a time as each portion rotates through the heating chamber as recited in claim 22. In the Lang et al. reference, both the upper and lower housings extend completely over and under, respectively, the pizza. Heat is constantly delivered to the entire pizza as taught by Lang et al., as the entire pizza rests within the heating chamber.

Sinks concerns a manually operated device in which a turn-table 3 can be rotated relative to a casing 1 including interior burners 2. Sinks includes a central spindle 4 which projects

through food supporting grill 8 in order to mount spindle 4 to casing 1 with an upper guide bearing 6.

There is no teaching or suggestion in Sinks that a food item can be centrally placed on grill 8, and then cooked by only having a portion of the food item within casing 1 at any giving time. In fact, such cooking is impossible with the Sinks device due to the presence of central spindle 4 projecting above grill 8. A pizza could not be centrally located as required by claim 22.

Neither Sinks or Lang et al. teaches or suggests cooking a pizza by: 1) placing a pizza on a generally circular, rotatable food support member having a central axis of rotation where the pizza is positioned over the axis of rotation; and 2) rotating the pizza multiple times through a heating chamber defined by upper and lower housings, the upper and lower housings extending over and under respectively only a portion of the food support member. As recited by claim 22, the heating members in the housings apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber to cook the pizza. Neither Sinks nor Lang et al. teaches or suggests that a pizza can be cooked in this manner. In both references, the food item is entirely within the heating chamber during the cooking process. Sinks teaches at page 1, line 73 "articles placed upon the grill by the operator are readily turned into close proximity to the heating means and may be readily brought out again for inspection and for turning on the grill." There is no teaching or suggestion that cooking of a pizza could occur while portions of the pizza are in the heating chamber, and the remaining portions are outside of the heating chamber.

Various reasons are supplied by the Examiner in the Office Actions for combining Sinks and Lang et al. Applicants respectfully submit the references are not combinable in the manner suggested by the Examiner to result in the method of claim 22. Further, the Examiner has used

hindsight analysis. Claim 22 concerns a method of cooking wherein a pizza is cooked without the necessity for an appliance as large as the pizza itself. Sinks teaches that the casing 1 is as large as the food item since the food item is disposed between the central axis defined by spindle 4 and an outside edge of grill 8. Further, Sinks is a manually operated device that is selectively moved by the operator to place food items into casing 1, and to remove food items. Lang et al. on the other hand is concerned with rotating a pizza contained entirely within a heating chamber in order to cook the pizza. For these reasons, Sinks and Lang et al. are not combinable to support a rejection of the method steps in claim 22.

Applicants submit the Examiner has conducted an impermissible hindsight-based analysis that uses Applicants' claims as a blueprint to pick and choose from isolated features in the prior art to construct the claims. In considering obviousness, the Examiner may not combine references unless there is a reason, suggestion, or motivation in the prior art that would lead one of ordinary skill in the art to make the combination, and that would also suggest a reasonable likelihood of success. Smiths Indus. Med. Sys. vs. Vital Signs, Inc. , 183 F.3d 1347, 1356 (Fed. Cir. 1999). The mere possibility that references could be combined is insufficient to support a conclusion of obviousness. Gentry Gallery, Inc. v. Berkline Corp. , 134 F.3d 1473, 1478 (Fed. Cir. 1998). Consequently, there is no legal basis for concluding that an invention would have been obvious "solely because it is a combination of elements that were known in the art at the time of the invention." Smiths Indus. Med. Sys., 183 F.3d at 1356.

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In this case, the Examiner has included various reasons for combining the references including that pizza was a popular food item, and that Lang et al. can accommodate larger food items, such as pizza, due to its lack of a central, protruding shaft. Also, the Examiner has identified a need to reduce the risk of burns to the operator. Further, the Examiner noted Lang et al. teaches a side heating element 60, saying it shows intermittent heating. These reasons for combining are based on hindsight reconstruction with respect to the method for cooking a pizza of claim 22. The devices and related methods taught by Sinks and Lang et al. are different. Lang et al. teaches controlled rotation of the food item while the food item is completely contained within the heating chamber. In Lang et al., side heating element 60 is one of three elements applying heat to the pizza contained within the heating chamber at all times. Sinks teaches a manually rotatable turn-table 3 which can be moved at selected times relative to a casing 1 which covers one half of the turn-table in order to allow the user to manually position food items into and out of casing 1 at desired times. There is no discussion in Sinks of constant rotation of the turn-table 3. Applicants respectfully submit there is no teaching or suggestion to combine Sinks and Lang et al. to result in the method of claim 22.

Even if Sinks and Lang et al. are combined, such as to remove the upper spindle 4 as the Examiner suggests, the references fail to teach or suggest that a pizza can be cooked while

centered on a food support, with "the upper and lower housings extending over and under respectively only a portion of the food support member such that heating members in the housings apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber." Sinks teaches that the food item is either entirely in casing 1, or outside of casing 1. To the extent Sinks has a food item entering casing 1 wherein a portion is within casing 1, and a portion is outside of casing 1, this only occurs during the checking or turning process when the operator moves grill 8 so as to position the food item within the heating chamber of casing 1, or to remove it. There is no centrally located food item which constantly has a portion outside of the heating chamber. In Lang et al., no portion of the food item is outside of the heating chamber.

There is simply no teaching or suggestion in the prior art of a method of cooking a rotating pizza, where a first portion of the pizza is within a heating chamber and a remaining portion is outside of the heating chamber. Without Applicants' teaching, the Examiner has engaged in speculation that such a method was obvious, or that it would even work to effectively cook pizza. The cited art does not teach that a pizza can be cooked when only a portion is between the heating members at any given time. Referring to Sinks or Lang et al. does not support the Examiner's assertions that Applicants' method steps are obvious. In fact, referring to Sinks or Lang et al. shows that the teachings were to completely place the food item in the heating chamber for cooking.

Applicants submit that the disclosures of Sinks and Lang et al. for cooking food that is completely within the heating chambers do not teach or suggest the method of claim 22 where only a portion of the rotating pizza is within the heating chamber at any given time. Neither Sinks or Lang et al. alone or in combination teaches this method.

2. Obviousness of Claim 23.

The cited art does not teach or suggest the additional method step of claim 23 of removing the food support member from the heating chamber after the pizza is cooked. Neither Sinks nor Lang et al. teach or suggest removing the food support member from the smaller footprint housings. Such removal is useful for storage of the food support member separate from the smaller footprint housings. Also, the food support member can be used to serve the cooked pizza.

Neither of the two cited references teaches or suggests the removal of the food support member. In Sinks, while grill 8 removable as separate halves, turn-table 3 is carried on a spindle 4 with upper and lower portions which prevent its removal. In Lang et al., there is no motivation to remove cooking surface 38. Further, as noted above, there is no motivation to combine Lang et al. and Sinks to provide a removable food support member in combination with smaller footprint upper and lower housings for use in cooking a pizza.

SUMMARY

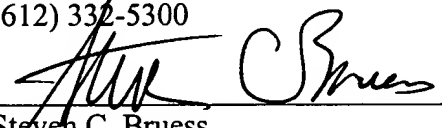
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Date: Jan. 27, 2004



Steven C. Bruess
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APPENDIX 1

THE CLAIMS ON APPEAL (as finally amended)

22. (Previously presented) A method for cooking a pizza comprising the steps of:

placing a pizza on a generally circular, rotatable food support member having a central axis of rotation wherein the food support member is adapted to be disposed in a substantially horizontal orientation and the pizza is positioned over the axis of rotation of the food support member; and

rotating the pizza contained on the food support member multiple times through a heating chamber defined by upper and lower housings, the upper and lower housings extending over and under respectively only a portion of the food support member such that heating members in the housings apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber to cook the pizza.

23. (Previously presented) The method of claim 22 further comprising the step of removing the food support member from the heating chamber after the pizza is cooked.